



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 10 2012

VIA FIRST CLASS MAIL

Michael J. Fox
Fox 41, LLC

Sarasota, FL 34236

RE: MUR 6546
Michael J. Fox
Fox 41, LLC

Dear Mr. Fox:

On April 4, 2012, the Federal Election Commission notified you and Fox 41, LLC ("Fox 41") of a complaint filed against you and Fox 41 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On June 22, 2012, based upon the information contained in the complaint, and information provided by you and Fox 41, the Commission decided to dismiss the complaint and closed its file in this matter.

The Commission encourages you to review the enclosed Factual and Legal Analysis, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. The Commission reminds you, that pursuant to 2 U.S.C. § 441d(a)(1) and 11 C.F.R. § 110.11, disclaimers may be required for certain public communications, to take steps to ensure that your conduct is in compliance with the Act and Commission regulations. For further information on the Act, please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100.

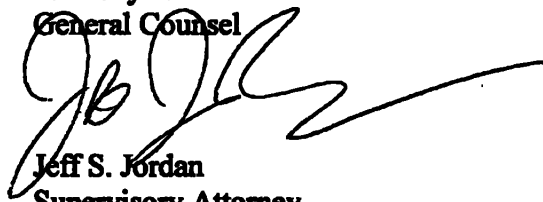
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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If you have any questions, please contact Frankie D. Hampton, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman
General Counsel

A handwritten signature in black ink, appearing to read 'JB', followed by a long horizontal line extending to the right.

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS: Michael J. Fox
Fox 41, LLC**

MUR 6546

I. INTRODUCTION

This matter was generated by a complaint filed by Jan Schneider alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations by Michael J. Fox and Fox 41, LLC. It was scored as a low-rated matter under the Enforcement Priority System ("EPS"), a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complainant, Jan Schneider, alleges that Michael J. Fox and/or Fox 41, LLC, a limited liability company owned by Mr. Fox, erected a large, double-sided sign on a commercial property that read "Defeat Obama in 2012," and contained no disclaimer, in violation of 2 U.S.C. § 441d. Complaint at 2, ¶¶ 4-6; 3-4, ¶¶ 8-10. According to the complaint, the sign was located on property in Sarasota, Florida owned by Fox 41, LLC, adjacent to a highly-traveled U.S. highway and is visible to traffic traveling on the highway in both directions. *Id.* at 2, ¶¶ 4-5. Complainant also states, with reference to an attached newspaper article, that a representative of Fox 41, LLC, reportedly said the sign is the first of 10,000 similar signs that Mr. Fox hopes will be erected throughout the country before July 4, 2012, and that Mr. Fox has established a fund to pay for the cost of the signs. *Id.* at 2-3, ¶ 7; Ex. A.

1 Mr. Fox filed a response acknowledging that he paid for the seven by nine foot sign,
2 which is located on property he owns, presumably as the sole shareholder of Fox 41, LLC.
3 Response at 1. He maintains that the sign was not authorized by a candidate, a candidate
4 committee, a political party, or any agent thereof. *Id.* Mr. Fox states that the City of Sarasota
5 issued a permit for the sign, and that the city did not consider it an "election sign," a
6 determination that he represents would have prohibited issuance of the permit under the city
7 code. *Id.* He further states that he was unaware at the time the permit was issued whether or
8 not Federal election law applied. *Id.* Mr. Fox represents that the sign was removed at his
9 "sole discretion" on April 5, 2012. *Id.* He characterizes his application for a city permit as an
10 indication of his good faith. *Id.* at 2.

11 Mr. Fox denies that any fund has been established to pay for the cost of the "Defeat
12 Obama" sign or any other sign. *Id.* at 1. He further addresses the allegation stemming from
13 the press report about establishing a fund for 10,000 similar signs by stating that he has no
14 control over other people's information, sources or reports and that the allegation is
15 "hearsay." *Id.* at 2.

16 **B. Legal Analysis**

17 The Act and the Commission's regulations require that a public communication that
18 expressly advocates the election or defeat of a clearly identified candidate must include a
19 disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(2). If the communication is not
20 authorized by a candidate, a candidate committee, or any agents thereof, it must state the full
21 name and the permanent street address, telephone number or World Wide Web address of the
22 person financing it and that it is not authorized by any candidate or candidate committee. 2

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1 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). A “public communication” includes outdoor
2 advertising facilities, such as billboards and “any other form of general political advertising.”
3 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. Signs are encompassed within the term “any other
4 form of general public political advertising,” although they are not specifically enumerated in
5 Sections 431(22) and 100.26. *See* 11 C.F.R. § 110.11(c)(2)(i) (specific reference to “signs” in
6 a provision setting out more specific requirements for disclaimers on printed
7 communications); *see also* MUR 6032 (Tom Leatherwood for Congress) (dismissal of low-
8 rated matter involving, in pertinent part, the lack of disclaimer on yard signs that the
9 Committee later corrected); MUR 5156 (Mark Morton) Statement of Reasons of
10 Commissioner Darryl R. Wold, Statement of Reasons of Chairman Mason and Commissioner
11 Bradley Smith (concurring, in part with Commissioner Wold), and Statement of Reasons of
12 Commissioner Scott Thomas (writing separately) (each concluding, in part, that a single sign
13 expressly advocating the election and defeat of federal candidates required a disclaimer, but
14 recommending dismissal instead of finding reason to believe the Act had been violated and
15 taking no further action).¹

16 Thus, as a public communication that expressly advocated the defeat of a federal
17 candidate, the “Defeat Obama in 2012” sign should have included a disclaimer.²

¹ At the time the Commission considered MUR 5156 in March 2002, the Act had not been amended to include the definition of “public communication” at Section 431(22). However, the disclaimer provisions at 2 U.S.C. § 441d applied to “any other type of general public political advertising.”

² If the cost of the sign was greater than \$250, Mr. Fox or his company should have filed an independent expenditure report with the Commission. *See* 2 U.S.C. § 434(c); *see also* 11 C.F.R. § 109.10(b). We have no information, however, about the cost of the relatively small sign.

1 Mr. Fox states that he has now taken down the sign and denies that any fund has been
2 established to pay for this sign or other signs. The Office of General Counsel has no
3 information to the contrary.

4 Accordingly, because Mr. Fox and/or Fox, LLC, apparently financed a single sign that
5 is no longer on display, the Commission has determined that further Enforcement resources
6 are not warranted in this matter. Therefore, the Commission exercises its prosecutorial
7 discretion and dismisses this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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